

NTSB Order No. EA-3728

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 21st day of October, 1992

Respondent.

Docket SE-10959

¹An excerpt from the hearing transcript containing the initial decision is attached.

(FAR), 14 C.F.R. Part 91, by landing on an airport runway which was closed, and which resulted in damage to his aircraft and endangerment to his passengers.² While finding that the evidence established all of the allegations,³ the law judge reduced the sanction from 30 days to 20 days because of information in the Board's file⁴ which indicated that the Administrator had offered to settle the case with respondent prior to the hearing for a 20-day suspension. The sole issue before the Board in this appeal is whether the law judge erred in reducing the sanction on the basis of the settlement offer.⁵ We agree with the Administrator that he did err, and, therefore, we will grant the appeal.

Inasmuch as the Administrator established all of the allegations in this matter, the law judge was obligated to defer to

²FAR § 91.9 [recodified as §91.13(a)] provided at the time of the incident as follows:

" § 91.9 Careless or reckless operation.

No person may operate an aircraft in a careless or reckless manner so as to endanger the life or property of another."

³The evidence established that when respondent called for a pre-flight weather briefing, he told the air traffic control specialist that his route of flight would be from 40 miles south of Fort Stockton to 30 miles north of Beaumont, going over Austin and north of Houston. The Jackson County Airport, the site of the accident, was 75 miles south of his stated route of flight, so the air traffic control specialist did not issue to respondent a NOTAM [notice to airmen] that runway 14-32 at that airport had been closed due to construction. Respondent lined his aircraft up with what he believed were the runway lights, but which were actually construction lights.

⁴A copy of the settlement offer was attached to the order which was filed by the Administrator's counsel as the complaint in this matter.

⁵Respondent, pro se, has filed a brief in reply.

the sanction selected by the Administrator, unless clear or compelling reasons existed to modify it. Administrator v. Muzquiz, 2 NTSB 1474 (1975); see also Administrator v. Pearson, 3 NTSB 3837 (1981). Here, the law judge reduced the sanction to 20 days because he believed that the Administrator would be satisfied with the sanction which he had offered in order to settle the case without a hearing. We agree with the Administrator that this was error.

Consistent with the public interest in promoting consensual resolution of cases, the Board, like the federal courts, bars the admission of evidence concerning the parties efforts to settle a matter. See, e.g., Administrator v. Alaska Island Air, Inc., NTSB Order No. EA-3633 at 2 (August 6, 1992) and Administrator v. Honan, 4 NTSB 418, 420 (1982)(finding that evidence respecting settlement negotiations should not be admissible in Board proceedings for any purpose). It follows that the law judge was not free to rely on information pertaining to a rejected settlement offer as a basis for modifying the sanction sought by the Administrator.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's appeal is granted;
2. The initial decision is affirmed, except with regard to sanction, and the Administrator's order is affirmed in its entirety; and
3. The 30-day⁶ suspension of respondent's private pilot certificate shall begin 30 days from the date of service of this order.⁷

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁶Respondent indicates in his reply brief that he has already surrendered his certificate to the Administrator and served 20 days of the suspension.

⁷For purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR §61.19(f).